BOARD OF APPEALS

for

MONTGOMERY COUNTY

Stella B. Werner Council Office Building 100 Maryland Avenue Rockville, Maryland 20850 (240) 777-6600

Case No. S-2565

PETITION OF MICHAEL A. ARMSTRONG

OPINION OF THE BOARD

(Public Hearing Date: May 14, 2003) (Effective Date of Opinion: September 10, 2003)

Case No. S-2565 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment.

The Board of Appeals held a public hearing on the application on May 14, 2003. Michael A. Armstrong appeared in support of the application. Lynn McCreary, Housing Code Inspector, Montgomery County Department of Housing and Community Affairs, testified. Mei Sheung Chou, a neighbor, appeared and asked Mr. Armstrong some questions about the configuration of the apartment.

Decision of the Board: Special Exception granted, subject to conditions enumerated below.

EVIDENCE PRESENTED

- 1. Michael A. Armstrong, owner of the subject property, requests permission for a special exception to convert an existing registered living unit (RLU) to an accessory apartment. In his application Dr. Armstrong states that the RLU was intended to house a housekeeper and childcare giver, that the current occupants are a married couple with one young child, that the mother provides housekeeping and child care services and the father provides part-time lawn care and handyman services. He stated that he was unaware that an RLU cannot house three persons. The subject property is Lot 11, Block A, Peter's Addition to Beallmount Grove Subdivision, located at 11752 Lake Potomac Drive, Potomac, Maryland, 20854, in the RE-2 Zone.
- Maryland national Capital Park and Planning Commission (MNCPPC) staff analyzed the application and recommended deferral of the Board's decision, based on the absence of certification from the county Department of Permitting

Services, Well and Septic Division, that the subject property's septic system is adequate to accommodate the accessory apartment. Dr. Armstrong submitted this information at the public hearing [Exhibit Nos. 15 and 16].

Staff finds that otherwise, the subject property is served by adequate public facilities, and that the application meets all of the general and specific standards in the Zoning Ordinance for granting an accessory apartment. Staff notes that the entrance to the apartment is located on the northwest side of the house and shielded from view by a brick retaining wall. Staff finds that the application is consistent with the Potomac Subregion Mater Plan, which supports the RE-2 Zone for the subject property, where accessory apartments are permitted by special exception. Staff also finds that the application meets the plan's guidelines for protecting residential areas in the process of locating special exceptions, and for retaining and expanding the supply of affordable housing in the Potomac Sub-region.

Staff finds that in a neighborhood including properties between Glen Road to the northeast and River Road to the south, along Great Elm Drive, Great Elm Court, Lake Potomac Drive, Lake Potomac Court and Lake Potomac Terrace, together with those that abut the subject property, there have been five applications for special exceptions, none of which were accessory apartments. Staff opines that most of those uses are no longer in operation, and finds that the instant application will not result in an over-concentration of special exceptions in the vicinity.

Staff finds that there is ample off-street parking and that there will be no detrimental impact on pedestrian or vehicular safety. Staff finds that the application meets all of the development standards for the zone. Staff finds that the overall floor area of the accessory apartment of approximately 1066 square feet is subordinate to the main dwelling and less than the required maximum of 1200 square feet.

- 3. DHCA Housing Code Inspector Lynn McCreary inspected the accessory apartment and submitted a report of the inspection into the record [Exhibit No. 13]. She noted in her report, and reiterated at the public hearing, that based upon the habitable area of the apartment, it is suitable for occupancy by two unrelated persons or a family of no more than five. She also noted that the accessory apartment has its own one-car garage.
- 4. The accessory is located in part of the walk-out basement of the home. [Exhibit No. 6(a)].
- 5. Dr. Armstrong and his family reside in the main dwelling unit. [Exhibit No. 3].
- The lot comprises 2.3 acres. [Exhibit No. 3].

- 7. The house was built in 1997 and the Armstrongs have lived in the house since that time. [Exhibit No. 3].
- 8. No exterior modifications are proposed. [Exhibit No. 16].
- 9. The accessory apartment has the same address as the main house and has a separate entrance at the side of the house, which is screened by a retaining wall. [Exhibit Nos. 3, 16].
- 10. The accessory apartment contains two bedrooms, a bathroom, kitchen, living area, dining area, small laundry room. [Exhibit Nos. 3, 6(a)].
- 11. Four off-street parking spaces are available in the two garages on the property. In addition, the property has extensive driveway space for off-street parking. [Exhibit Nos. 3, 4 and 11].
- 12. Dr. Armstrong affirmed to MNCPPC technical staff that he will receive compensation for only one dwelling unit. [Exhibit No. 16].
- 13. Mei Sheung Chou, lives at 11748 Lake Potomac Drive and appeared at the public hearing to learn the location and configuration of the accessory apartment in the home.

FINDINGS OF THE BOARD

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The physical and operational characteristics necessarily associated with an accessory apartment include: the existence of the apartment as a separate entity from

the main living unit, but sharing a party wall with the main unit; the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code; provision of a separate entrance and walkway, and sufficient lighting; additional activity from that household, including more use of the outdoor space and more pedestrian and automobile traffic and parking activity; and the potential for additional noise from the additional household.

The accessory apartment in the instant application is subordinate to the main dwelling, has a well-screened separate entrance which maintains the single family appearance of the house, four garage parking spaces, together with substantial driveway area for parking.

The Board finds that none of the physical or operational characteristics of the proposed accessory apartment exceed what would be expected with the use. The Board finds that there will be no non-inherent adverse effects from this proposed accessory apartment.

59-G-1.21. General Conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:
 - (1) Is a permissible special exception in the zone.

Accessory apartments are permitted by special exception in the RE-2 Zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

As discussed further below, the application complies with all of the pertinent standards.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the

applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board adopts MNCPPC staff's finding that the application is consistent with the Potomac Sub-region Master Plan.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

No new structures are proposed. The accessory apartment's entrance maintains the single family residential character of the house. Ample off-street parking is available. The lot is 2.3 acres in size, which buffers neighboring properties from activity associated with the apartment. The Board finds, therefore, that the appearance and relatively low impact of the accessory apartment will be in harmony with the general character of the neighborhood.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds, given the ample parking, buffering and screening, and limitation on occupancy of the accessory apartment, that it will have little visual or operational impact on surrounding properties or the general neighborhood, and will not be detrimental to their use, peaceful enjoyment, economic value or development.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The accessory apartment will be well screened and buffered from the view of surrounding properties, and will entail no activity to create the above-listed objectionable effects.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.

The Board adopts MNCPPC technical staff's finding that the application will not create an over-concentration of special exception uses in the area.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds no evidence that the physical or operational characteristics of this accessory apartment will have any of the above-listed adverse effects.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.

At the public hearing Dr. Armstrong submitted a letter from the Well and Septic Division of the Department of Permitting Services which certifies the subject property's septic system for service of the six bedrooms in the house. In addition, technical staff found that the property is served by all other required public facilities.

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

Not applicable.

(ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The Board adopts MNCPPC staff's finding that there will be no detrimental effect on pedestrian or vehicular safety.

Specific Standards

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

(1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.

Only one accessory apartment is requested.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:
 - (i) The lot is 2 acres or more in size; and
 - (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.

The accessory apartment, located in the basement of the house, shares at least one party wall with the main house.

(3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

Not applicable.

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

The house was built in 1997 and is therefore, six years old.

- (5) The accessory apartment must not be located on a lot:
 - (i) That is occupied by a family of unrelated persons; or
 - (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or
 - (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.

None of the listed conditions exists at the subject property.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

The entrance to the apartment is located at the side of the house and is screened from view by a retaining wall.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

No external modifications are proposed.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

The accessory apartment has the same address as the main house.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

The apartment contains 1066 square feet and, occupying a portion of the basement, is subordinate to the main dwelling.

- (b) Ownership requirements:
 - (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

The Armstrongs reside in the house.

(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

The Armstrongs have owned the subject property for six years.

(3) Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.

- Dr. Armstrong affirmed his understanding of this requirement to technical staff.
- (4) For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.

The Armstrongs own the subject property.

(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

Not applicable.

- (c) Land use requirements:
 - (1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building

The lot comprises 2.3 acres.

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(6) which concerns excessive concentration of special exceptions in general).

The Board adopts MNCPPC technical staff's finding that there will be no overconcentration of special exception uses in the general neighborhood.

(3) There shall be adequate water supply and sewage disposal systems to serve the occupants of both the accessory apartment and the main dwelling.

Based upon the letter from the Well and Septic Division of the Department of Permitting Services certifying the septic system for the subject property and upon staff's finding of the adequacy of all other public facilities, the Board finds that the property is served by both adequate water and sewerage services.

- (4) Adequate parking shall be provided. There must be a minimum 2 offstreet parking spaces, unless the Board makes either of the following findings:
 - (i) More spaces are required to supplement on-street parking; or
 - (ii) Adequate on-street parking permits fewer off-street spaces.

Off-street parking spaces may be in a driveway but otherwise shall not be located in the yard between the front of the house and the street right-of-way line.

The Board finds that there is ample off-street parking available in the two garages and extensive driveways on the property.

(5) Accessory apartments shall not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and shall cause no objectionable noise, traffic or other adverse impacts.

The accessory apartment's entrance maintains the single family residential character of the house. Ample off-street parking is available. The lot is 2.3 acres in size, which buffers neighboring properties from activity associated with the apartment. The Board finds, given the ample parking, buffering and screening, and limitation on occupancy of the accessory apartment, that it will have little visual or operational impact on surrounding properties or the general neighborhood, and will not be detrimental to their use, peaceful enjoyment, economic value or development.

Therefore, based upon the foregoing, the Board grants the special exception, subject to the following conditions:

- 1. The Petitioner shall be bound by his testimony and exhibits of record to the extent that such testimony and evidence are identified in the Board's opinion granting the special exception.
- 2. Pursuant to the provisions of the Montgomery County Housing Code, and based upon its square footage, occupancy of the accessory apartment will be limited to two unrelated persons or a family of no more than five.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Louise L. Mayer and Donna L. Barron, Vice Chairman in agreement and Donald H. Spence, Jr., Chairman necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Daniel Danie

Donna L. Barron Vice Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book of the Board of Appeals for Montgomery County, Maryland this 10th day of September, 2003.

Katherine Freeman
Executive Secretary to the Board

Note:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.